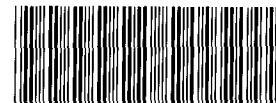


# memorandum



000030272

DATE: FEB 22 1993

REPLY TO:  
ATTN OF: ERD:PMP:02327

SUBJECT: 1993 South Interceptor Ditch Burn

TO: George H. Setlock, Director  
Environmental Protection  
EG&G Rocky Flats, Inc.

We have reviewed the status of the original documentation involved with the proposal to burn vegetation in the South Interceptor Ditch (SID). We feel that the issues that were raised in your letter of January 21, 1993, should be addressed as follows:

## Section 404 (Corps of Engineers) Wetland Permit

The Corps of Engineers did not require a 404 Permit for the SID burn activity as it was originally described to them. Unless the scope of the proposal has changed, a 404 Permit is still not required for the burn.

## Corps - EPA Jurisdiction Controversy

The EPA is aware of the plans to burn the vegetation in the SID, and has not voiced a concern. Since the SID is not an individual hazardous substance site, we do not feel that the EPA has jurisdiction over the wetlands vegetation in the SID.

## Compliance with 10 CFR 1022

Since RFP proposes to burn vegetation in the SID as a part of the routine maintenance of the SID, this activity is exempted from the requirements of the Floodplain/Wetlands Review regulations.

## Categorical Exclusion (CX)

The CX states that vegetation burning will occur during the dormant season as contrasted with the growing season. If the proposed burn no longer fits that description, the existing CX does not provide NEPA documentation for the burn.

### **Compliance with the Endangered Species Act**

A *spiranthes* survey was conducted at the RFP including the SID in August 1992, and the results were negative. Thus, Endangered Species Act compliance has been completed.

### **Compliance with the Fish and Wildlife Coordination Act, Migratory Bird Treaty Act, and Bald and Golden Eagle Protection Act**

FWCA compliance has been achieved as noted in a FWS letter to DOE dated November 21, 1993, and a CDOW letter to RFO dated November 22, 1993.


With regard to MTBA compliance, a nesting survey should be performed prior to the burn. If the results of the survey indicate a potential for a "take" as defined in the MTBA, permits should be obtained from both the FWS and CDOW prior to the burn. If the results of the survey indicate that a "take" would not occur, the burn may proceed. If the burn is to be conducted, the following steps must be taken prior to initiating the burn:

- 1) a second nesting survey shall be conducted if more than a week has passed since the initial survey to verify that a "take" will not occur;
- 2) the burn shall be conducted prior to the spring migration and nesting of RFP migratory birds.

With regard to the BGEPA, the burn may proceed if it is documented that bald or golden eagles neither nest nor forage at the SID. Note that a nesting pair of bald eagles has been sighted near Standley Lake.

### **Memo from the Office of Southwestern Area Programs (EM-453)**

The comments included in the memo from EM-453 were made on the habitat survey report for the SID rather than the burn proposal itself. The habitat survey report has already been accepted by the USFWS.



Richard J. Schassburger  
Acting Manager  
Environmental Restoration Division

cc:

S.M. Nesta, EG&G  
J.D. Krouse, EG&G